1960

Floyd Bradley and Rose Mary Eldridge Jude Bradley v. State of Utah et al : Brief of Appellant

Utah Supreme Court

John A. Hendricks; Attorney for Appellants;

Case No. 9329

IN THE SUPREME COURT
OF THE
STATE OF UTAH

FLOYD BRADLEY and ROSE MARY ELDRIDGE JUDE BRADLEY,

Appellants,

- vs. -

STATE OF UTAH in the interest of LINDA JEAN JUDE, ROBERT TAYLOR, RICKEY BRADLEY, DEBRA BRADLEY, DONALD BRADLEY, RONALD BRADLEY JACKIE BRADLEY and JUDY BRADLEY,

Respondents.

Appellant's Brief

JOHN A. HENDRICKS,
Attorney for Appellants.

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APPELLANTS' BRIEF

STATE MENT OF FACTS

This case is concerned with eight children born to petitioner, Rose Mary Bradley, the two older children, Linda Jean Jude, born August 31, 1948, and Robert Taylor, born December 28, 1950, were issue of former marriages of petitioner, Rose Mary. The six other children were born issue of marriage of the Bradleys.

Rickey was born August 26, 1953; Debra was born November 23, 1954; Ronald and Donald, twins, were

born November 29, 1956, and Jackie and Judy, twins, were born February 11, 1958.

Linda's and Robert's fathers had abandoned them and were divorced by Mrs. Bradley.

Excessive drinking of alcoholic beverages by the Bradleys, especially by Mrs. Bradley, were the sole proximate cause of the children being badly neglected. The Welfare department and Juvenile court gave the Bradleys chances to correct the situation. The Bradleys had made promises to quit drinking but failed to keep them.

As a culmination of the conduct of the mother and father on June 20, 1959 the Juvenile Court made and order declaring all the children neglected and placed them within the jurisdiction of the court under the protective supervision of the State Department of Public Welfare and continued them in the custody of Mr. and Mrs. Bradley upon condition they would not drink intoxicating beverages nor frequent taverns where beer was sold.

Sometime later Mr. and Mrs. Bradley went to her sister's apartment taking with them the six month old twins. In company of Mrs. Bradley's sister and her fiance friend, Dusty Fain (they later married) they all staged a prolonged drinking bout which came to the attention of the Juvenile officers and resulted in the filing of a petition to take custody of the children. The Bradleys were served notice to appear on August 7, 1959 for trial. But instead of doing so they left the State with the children.

They returned in December and the children were immediately taken into custody by Juvenile Court officers and hearings were had, with the parents present.

On December 10, 1959 the Court made and entered Amended Findings of Fact and Amended Decrees depriving the parents of custody of the six Bradley children and on December 23, 1959 the Court made and entered two separate Findings of Fact and Amended Decrees depriving the mother and stepfather of the custody of Robert Taylor and Linda Jean Jude.

The Amended Findings of Fact and Amended Decrees were identical except as to names and dates, to-wit:

"AMENDED FINDINGS OF FACT (R File 1 p 15)

1. That by that certain Decree and Judgment made and entered herein on the 15th day of July, 1959, the above named children were declared and adjudged neglected children and continued under the protective supervision of this Court, in the custody of their father, Floyd Bradley, and their mother, Rose Mary Eldridge Jude Bradley, and upon the condition among others that said father and said mother not drink intoxicating beverages including beer.

2. That the said father and said mother have failed to abide by said condition and both said father and mother did on about the 1st day of August 1959, consume beer and whisky in the apartment of Helen Eldridge, 422 27th Street, Ogden, Utah, and said mother was nude in said apartment in the presence of the above named children and Shirley Fain, otherwise known as Dusty Fain, a male.

3. That said father and mother are not fit to have custody of said children.

AMENDED DECREE (R File 1 p 15)

It is therefore ORDERED, ADJUDGED AND DECREED as follows: That all the parental rights of the father Floyd Bradley and the mother Rose Mary Eldridge Jude Bradley, be and are hereby terminated and said parents are hereby deprived of the custody, control and guardianship of said children. That the said children shall be placed in the custody, control and guardianship of the Utah State Department of Public Welfare and said Welfare Department be and are hereby authorized to place said children for the purpose of adoption. THAT SAID CHILDREN SHALL REMAIN UNDER THE CONTINUING JURISDICTION OF THIS COURT UNTIL SAID ADOPTION IS GRANTED BY A COURT HAVING JURISDICTION. That the said Utah State Department of

Public Welfare, upon finding a proposed adoptive home for said children shall submit to this Court for its approval, a report regarding the character and social background of said proposed adoptive parents and that said children shall not be placed with said adoptive parents for the proposed adoption until so authorized by this Court." Emphasis added.

On May 23, 1960, Mrs. Bradley on behalf of herself and husband filed petitions for the restoration of the custody of their children on the grounds of changed conditions, as provided for in 55-10-41 UCA 1953, alleging that the parents had conquered their alcoholic problem and had definitely quit drinking alcoholic beverages of any kind and by reason of that were able to furnish their children a good home, parental love and affection and the best of care.

Answers to the petitions were filed by the assistant County Attorney and the Weber Department of Public Welfare. The answers were identical except as to name. The allegations were in substance - a) that the Court hasn't jurisdiction at this time; b) that mother has had insufficient time to overcome her

alcoholic problem; c) that suitable homes and adoptive parents have been found for the 2 sets of twins; d) that Debra, Rickey, Linda and Robert were adjusting well in foster homes.

On July 12, 1960 without any hearings on the petitions and without any investigations on the part of the Juvenile Court or its officers and without notice to appellants or their attorney the Court issued an order (R File No. 1 page 5) which in effect permanently deprived the parents of the custody of their children and refused to set a date for the hearing of the petitions for restoration of custody of children on grounds of changed conditions. Appellants urged the Court to allow them to offer evidence of changed conditions in support of their petitions. The Court refused to let the petitioners make the offer.

The appellants were prepared to present the following evidence in support of their petitions:

That the parents soon after being deprived of the custody of their children were inducted into the

Alcoholic Anonymous program and had ceased to drink alcoholic beverages of any kind; that they had rented and furnished a home in a good residential area; that the father was steadily employed at a base pay of $88.00 per week and that they were in a position to furnish their children with the best of parental care and sustenance. They also could produce testimony of a psychiatrist and AA workers that in their opinion the parents would continue with their sobriety.

Upon filing notice of appeal the Court made an order staying all adoption proceedings (R File 1 p 2).

STATEMENT OF POINTS

POINT I.

THAT IT WAS GROSS ABUSE OF DISCRETION ON THE PART OF THE JUEVENILE COURT TO REFUSE TO SET A DATE FOR A HEARING OF THEIR PETITIONS FOR RESTORATION OF CUSTODY OF THEIR CHILDREN ON THE GROUNDS OF CHANGED CONDITIONS AS PROVIDED FOR IN 55-10-41 UCA 1953.

POINT II.

THE JUVENILE COURT DIS NOT HAVE BEFORE IT EVIDENCE NECESSARY TO PROVE THAT THE APPELLANTS WERE NOT FIT AND PROPER PERSONS TO BE AWARDED CUSTODY OF THEIR MINOR CHILDREN BY REASON OF CHANGED CONDITIONS, NOR THAT THEY SHOULD BE PERMANENTLY DEPRIVED OF THE CUSTODY OF THEIR CHILDREN, AND THAT THE CHILDREN SHOULD BE PLACED FOR ADOPTION.

ARGUMENT

POINT I.

THAT IT WAS GROSS ABUSE OF DISCRETION ON THE PART OF THE JUVENILE COURT TO REFUSE TO SET A DATE FOR HEARING OF THEIR PETITIONS FOR RESTORATION OF CUSTODY OF THEIR CHILDREN ON THE GROUNDS OF CHANGED CONDITIONS AS PROVIDED FO IN 55-10-41 UCA 1953.

There are no ifs and ands about the Statute 55-10-41 UCA 1953 providing for a hearing on the grounds of changed conditions. This Court in the case In re Bradley 109 U 538, 167 P2 978, said:

> "THIS DOES NOT MEAN THAT BARBARA WILL BE FOREVER BARRED FROM OBTAINING THE CUSTODY OF HER BABY."

In that case the mother was guilty of gross immorality. In the instant case neither parent has a criminal record nor have they been charged with immorality except the mother was found naked in a drunken stupor.

In State v. Sorensen 102 U 474, 132 P2 132 this Court upheld a probation period. In Fronk v. State 7 U2 245 at p. 254 this Court said:

> "IT DOES NOT NECESSARILY FOLLOW FROM A FINDING THAT THE CHILDREN ARE NEGLECTED THAT AND ORDER MUST BE MADE DEPRIVING THE PARENTS OF CUSTODY."

The following has been cited from In re Minnicar's Estate (Cal) 297 P2 105 by this Court in Fronk v. Stat

and others, to-wit:

"THAT THE TIME AT WHICH FITNESS MAY BE JUDGED IS THE PRESENT AND NOT THE PAST."

In Deveraux v. Brown, 2 U2 334, 273 P2 185 the Court said:

"ANY ORDER OF THE JUVENILE COURT DEPRIVING PARENT OF THE CUSTODY OF HIS CHILD MAYBE REVOKED OR MODIFIED AND CUSTODY AND CONTROL OF SUCH CHILD RETURNED TO THE PARENT ON SHOWING OF CHANGED CONDITIONS WHICH REQUIRE SUCH RETURN OF CUSTODY IN INTEREST OF THE CHILD."

The County Attorney and Welfare Department recognized that the appellants had the right to review if conditions were changed.

"THE UNFITNESS WHICH WILL DEPRIVE A PARENT OF THE RIGHT OF CUSTODY OF THE CHILD MUST BE POSITIVE AND NOT MERELY COMPARATIVE, OR MERELY SPECULATIVE." Cooke v. Cooke 67 U 371, 248 P. 83; State v. Sorensen, supra.

There was no evidence before the Court as to the fitness of the parents to have custody of their children by reason of changed conditions, therefore the Court's order must have been based on speculation.

This Court has held the rule to be that there is a legal presumption that it is for the best interests of the child and society for the child to remain

with its natural parents during the period of its minority under their supervision and direction and the burden of persuading the Court is never on the parents. Hummel v. Parrish, 43 U 373, 134 P 898; State v. Sorensen, supra and In re Bradley, supra.

POINT II.

THE JUVENILE COURT DID NOT HAVE BEFORE IT EVIDENCE NECESSARY TO PROVE THAT THE APPELLANTS WERE NOT FIT AND PROPER PERSONS TO BE AWARDED CUSTODY OF THEIR MINOR CHILDREN BY REASON OF CHANGED CONDITIONS, NOR THAT THEY SHOULD BE PERMANENTLY DEPRIVED OF THE CUSTODY OF THEIR CHILDREN, AND THAT THE CHILDREN SHOULD BE PLACED FOR ADOPTION.

The record absolutely shows that there was no such evidence at all before the Court.

The order permanently depriving appellants of their children and refusing to have a hearing on their petitions gives no consideration to the rule adopted by the Utah Supreme Court, as well as by a great majority of appellate courts, which holds that a parent, whose child has been taken from him because of his misconduct, is entitled to have the child restored to him upon proof that he has reformed and is presently able to provide a suitable home for the child. In re Bradley, supra; State v. Sorensen, supra;

Ex Parte Day, 189 Wash. 368, 65 P.2 1049; Moss v. Vest, 74 Ida. 328, 262 P.2 116; 39 Am. Jur., Sec. 25, P. 615; State v. Fronk, supra.

CONCLUSION

It is appellants' contention that the record before the Juvenile Court fails to show any evidence whatever as to appellants' present ability to provide their children with proper care or that they are not now morally fit and proper persons to have their children restored to them. We sincerely assert there is nothing in the record to justify the Juvenile Court in making its order permanently depriving the parents of the custody of their children and ordering them placed for adoption.

The record clearly indicates that the Juvenile Court abused its discretion in not ordering that the Welfare Department continue to hold the children under its jurisdiction, and setting a hearing at a later date in order that the appellants' fitness and ability to provide a proper home and care for their

children could be determined at such time.

It is, therefore, respectfully submitted that the judgment of the Juvenile Court should be reversed with instructions to order that the matter again be heard by the Juvenile Court to determine appellants' present fitness to be granted the custody of their minor children.

Respectfully submitted,

JOHN A. HENDRICKS,

Attorney for Appellants.